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INTEGRITY
LEADERSHIP

February 28, 2023
Report 2022-120
FACT SHEET

Grant Parks *California State Auditor*

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Orange County Power Authority

Increased Board Oversight Is Needed to Improve Its Operations

Background

The Orange County Power Authority (OCPA) is one of 25 community choice aggregators (CCA) serving customers in California. A CCA procures electrical power from alternative power suppliers and provides it to participating customers within the geographical boundaries of the local governments that participate in the CCA. The power is then delivered to customers through the existing infrastructure of the investor-owned utility supplying power in that area. Because customers may opt out of its services, OCPA has a business need to earn and maintain the trust of the customers in its service area. However, despite its relatively recent formation, OCPA has been the subject of scrutiny and criticism from members of the media and the public and certain other entities who have raised concerns about OCPA's contracting practices and transparency. Since OCPA began providing power in April 2022, more customers than expected have opted out of its service, which could hinder its ability to operate efficiently.

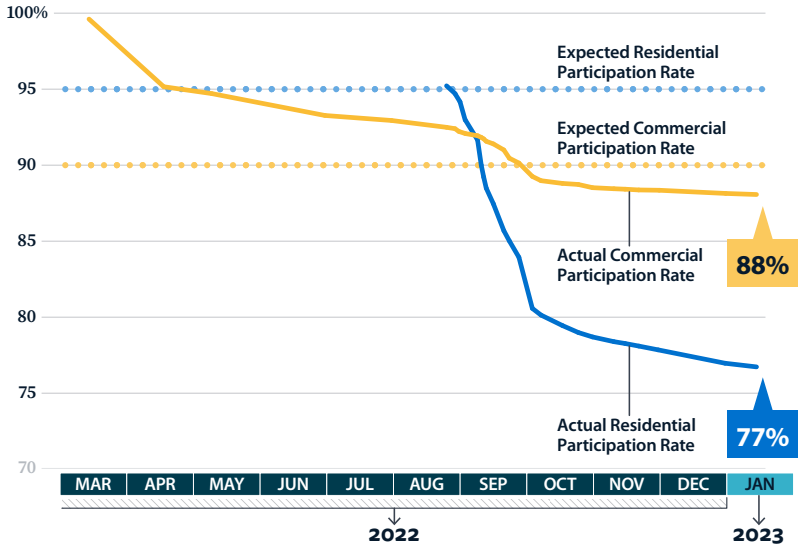
Key Findings

- The number of customers opting out of OCPA's service could negatively affect its profitability, operations, and mission.
  - » Its residential customer participation rate dropped to 77 percent within a few months after it began providing service.
  - » We estimate that the difference between its projected participation rates and its current participation rates could reduce its expected gross revenue by more than $22 million in fiscal year 2022–23 alone.
- Some OCPA practices lack proper oversight by its board of directors and could contribute to negative public perception.
  - » It has engaged in contracting processes that were neither competitive nor sufficiently accountable, such as splitting proposals into multiple contracts.
  - » OCPA could not demonstrate what factors it considered when evaluating the proposals it received for certain services.
  - » It has avoided competitive bidding processes by repeatedly amending some contracts.
  - » We identified areas in which OCPA can improve the quality of its administrative practices—such as managing public records requests—to build trust with customers.
- OCPA needs to strengthen certain planning and operational processes.
  - » It has not hired the staff necessary to oversee the consultant that manages its power procurement.
  - » OCPA could not demonstrate that its risk oversight committee—intended to mitigate market and credit risks—has fulfilled its responsibilities.

Key Recommendations

- OCPA's board of directors should do the following to improve OCPA's procurement processes:
  - » Direct staff not to split purchases when doing so circumvents requirements for competitive bidding and board oversight.
  - » Require staff to maintain documentation of the evaluations that they perform of responses to competitive bidding processes, regardless of the dollar amount of the proposal or contract.
  - » Amend its procurement policy and contract delegation policy to clarify whether the thresholds in these policies apply to contract amendments.
- OCPA's board should also direct its risk oversight committee to fulfill the responsibilities defined in OCPA's policy and amend this policy to include a limited subset of board members on the committee.
- OCPA should immediately devote additional effort to hiring the staff to oversee its consultant that manages its power procurement.

OCPA's Participation Rates Are Below Expected Levels



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February 28, 2023
2022-120

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Our office's audit of Orange County Power Authority (OCPA)—conducted in accordance with Rule 17 of the Joint Legislative Audit Committee—concluded that OCPA's operations require increased oversight, which its board should provide.

Despite its relatively recent formation, OCPA has been the subject of scrutiny and criticism from members of the media, members of the public, and certain other entities that have raised concerns about OCPA's contracting practices and transparency. Because customers may opt out of its services, OCPA has a business need to earn and maintain the trust of the customers in its service area. However, since OCPA began providing power in April 2022, more customers than expected have opted out of its service. As a result, the proportion of potential customers receiving services from OCPA is below the rates of other similar programs in California, a fact that could hinder its ability to operate efficiently.

Our review found issues of varying severity regarding the accountability and transparency of certain OCPA operations. OCPA demonstrated a pattern of contracting practices that were noncompetitive and that reduced accountability by repeatedly circumventing and violating its own policies, raising questions about whether its customers are receiving the highest quality professional services available. OCPA could also improve the way it shares information with its customers and the public. Finally, OCPA needs to strengthen certain planning and operational processes that have implications for the accuracy of its financial projections and its ability to mitigate risk associated with its power purchases. OCPA's board should address these issues to improve OCPA's internal processes and its public image, thereby better positioning it for future success.

Respectfully submitted,

GRANT PARKS
California State Auditor

Selected Abbreviations Used in This Report

CCA	community choice aggregator
CEO	chief executive officer
CFO	chief financial officer
OCPA	Orange County Power Authority
RFQ	request for qualifications

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Summary

Results in Brief

To help ensure that it succeeds in its goals of increasing the use of renewable energy and the local control of energy production, Orange County Power Authority (OCPA) needs to increase the transparency of its operations and strengthen key business practices. OCPA is one of 25 community choice aggregators (CCAs) serving customers in California. A CCA procures electrical power from alternative power suppliers and provides it to participating customers within the geographical boundaries of the local governments that participate in the CCA. The power is delivered to customers through the existing infrastructure of the investor-owned utility supplying power in that area (default utility). Although Californians often lack choice with respect to many traditional public services, such as water and wastewater, residents of communities that have joined OCPA (member communities) may opt out of the CCA's services and instead buy power from the default utility. Consequently, OCPA has a business need to earn and maintain the trust of the customers in its service area.

Since OCPA began providing power in April 2022, more customers than expected have opted out of its service and have chosen to buy power from the default utility instead. In the lead-up to OCPA's formation, a feasibility study assumed participation rates of 95 percent for residential customers and 90 percent for commercial customers. The participation rate is the proportion of eligible customers who receive service from the CCA. However, as of January 2023, OCPA's participation rates for residential and commercial customers were 77 and 88 percent, respectively. Not only are OCPA's participation rates lower than projected, they are also below the rates of other California CCAs. A low participation rate could hinder OCPA's ability to operate efficiently because a lower number of total customers reduces OCPA's anticipated gross revenue, may affect its ability to provide power for the lowest price possible, and forces it to spread fixed costs across a smaller number of customers. Having a large number of customers opt out also hampers OCPA's goals of increasing renewable energy use and local control over power decisions.

OCPA's status as a relatively large CCA provides some insulation from the effects of individual customers' choices to opt out of its service. However, the potential loss of entire member communities is a significant concern. In response to concerns about OCPA's operations, including its lack of transparency and accountability, in December 2022 the Orange County Board of Supervisors reversed the county's plan to have OCPA serve its unincorporated areas. Although the board's decision does not apply to other communities

Audit Highlights . . .

Our audit of the Orange County Power Authority highlighted the following:

- » *The number of customers opting out of OCPA's service could negatively affect its profitability, operations, and mission.*
  - *Its residential customer participation rate dropped to 77 percent within a few months after it began providing service.*
  - *OCPA must adequately address its member communities' concerns about transparency and accountability to retain or add the customers necessary to realize its goals.*
- » *Some OCPA practices lack proper board oversight and could contribute to negative public perception.*
  - *It has engaged in contracting processes that were neither competitive nor sufficiently accountable.*
  - *It has avoided competitive bidding processes by repeatedly amending some contracts.*
  - *It should improve the quality of other administrative practices—such as managing public records requests—to build trust with customers.*
- » *OCPA should strengthen certain planning and operational processes.*
  - *It has not hired the staff necessary to oversee the consultant that manages its power procurement.*
  - *It could not demonstrate that a committee intended to mitigate market and credit risks has fulfilled its responsibilities.*

within the county that have joined OCPA, it demonstrates that public concerns about OCPA's transparency and operations pose a threat to its participation rate and its ability to attract or retain entire communities. As such, OCPA should make efforts to address those concerns.

Our review found issues of varying severity regarding the accountability and transparency of certain OCPA operations. Of greatest concern was a pattern of contracting practices that were noncompetitive and that reduced accountability by repeatedly circumventing and violating OCPA policy. OCPA's inadequate handling of these agreements and insufficient oversight by its board raise questions about whether customers are receiving the highest-quality professional services from a series of marketing and financial services contracts worth a combined $1.8 million.

Although OCPA generally complied with legal requirements related to transparency and accountability in other areas we reviewed, there are a number of ways in which it could improve its operations to build trust with its customers and the public at large. For example, OCPA has been criticized for its handling of California Public Records Act requests (public records requests), including allegations that it has ignored or denied requests from members of the public and city council members from OCPA's member communities. Even though we did not find any evidence that OCPA has failed to provide any response to the public records requests we reviewed, there were limitations in OCPA's ability to quickly and clearly demonstrate that it had responded appropriately to all such requests. Similarly, we could not determine whether OCPA complied with certain open meetings requirements in state law because of limitations with its recordkeeping. Finally, we identified improvements OCPA can make in the information that it shares with current and potential customers on its website.

Another area of needed development for OCPA is its financial planning and use of customer data for budget and power use projections. We found that issues with planning and power use data affected the reliability of OCPA's operating budget for fiscal year 2021–22. As a result of these issues, OCPA spent more on power than it expected to during the fiscal year and earned about $3.4 million less in net income than it had projected in its original budget. When it created its budget for the current fiscal year, OCPA had not yet corrected all of these issues or estimated how much they may affect its revenues. Further, OCPA does not plan to begin using its own data on customer power use for budgeting purposes until fiscal year 2023–24. Although some of the factors contributing to these issues may be beyond OCPA's direct control, improved data collection and analysis will help OCPA more accurately project demand for its power and expected revenue.

Similarly, OCPA needs to hire staff with sufficient expertise to oversee the contractor that purchases and manages the power it sells. OCPA works with an external expert to forecast the amount of power it needs and to manage the procurement of power. Through this process, OCPA has committed to purchasing or has purchased power—along with commitments for generating capacity that will operate when needed for system reliability—that are worth more than $1 billion. However, despite the fact that OCPA is ultimately responsible for executing these agreements to supply power to its customers, we are concerned that it does not have staff with sufficient technical knowledge about the terms of the agreements. Although it may be reasonable for

OCPA to rely on the technical advice of industry experts to some extent, particularly as a new organization, it is also vital that it develop the technical capacity and institutional knowledge to safeguard public funds and protect the interests of its customers.

Because OCPA is a relatively new organization and because of cost limitations imposed on our audit, which was approved under Rule 17 of the Joint Legislative Audit Committee, we did not attempt to address the requester's question about OCPA's long-term viability. Nonetheless, addressing these issues—which relate both to OCPA's internal processes and public perception among its member communities—could better position OCPA for success in achieving its mission.

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Recommendations

The following are the recommendations we made as a result of our audit. Descriptions of the findings and conclusions that led to these recommendations can be found in the Audit Results section of this report.

Orange County Power Authority

To allow OCPA to more conclusively demonstrate that it is appropriately responding to public records requests, it should improve its tracking and handling of these requests by developing and following written procedures governing how it processes them.

To demonstrate to stakeholders its compliance with the state law requiring open meetings, by May 2023 OCPA should begin tracking information showing when meeting agendas are made publicly available.

To improve customer retention, OCPA should take steps to build trust with current and potential customers by communicating more clearly with them. For example, it should update its website as soon as feasible to provide additional useful information about its operations and communicate whether and how it has provided savings to customers and other relevant benefits to member communities.

To improve the accuracy of its budget projections, beginning with its fiscal year 2023–24 budget, OCPA should implement its plan to use information it has collected on customer power usage and opt-out rates when making projections of its revenues, its expenditures, and its need to procure power.

To provide sufficient oversight of its contractors and better protect public funds, OCPA should immediately devote additional effort to hiring a power resources director with the necessary expertise to update its projections of power needs, to better evaluate power purchase agreements, and to effectively oversee the work performed by its relevant contractors.

OCPA Board of Directors

To ensure that OCPA acts in its customers' best interests when contracting for services, by September 2023 OCPA's board should strengthen its procurement processes by doing the following:

- Direct staff to follow its policy that prohibits splitting purchases into multiple purchases if doing so results in contracts for amounts that are less than the relevant procurement limits for the amount of the combined purchase.

- Remind staff to follow its policy that all new contracts of more than $50,000 should be reported at the next regular board meeting and that all contracts of more than $125,000 should be approved by the board before their execution.

- Require staff to maintain documentation of the evaluations that they perform of responses to competitive bidding processes, regardless of the dollar amount of the proposal or contract.

- Instruct staff to perform periodic evaluations of contractors' performance and provide those evaluations for the board's review when staff request approval of new contracts or contract amendments with those contractors.

- Amend its procurement policy and contract delegation policy to clarify whether the thresholds in these policies apply to contract amendments.

To ensure that OCPA does not spend or incur fees for which it does not have proper board approval, by May 2023 OCPA's board should direct staff to provide reports on at least a quarterly basis that specify the dollar value of each service contract, the amount paid to each contractor to date, and the amount owed to the contractor for work performed but not yet paid.

To enhance transparency and build trust with its member communities and the public, by May 2023 OCPA's board should direct staff to report no less than quarterly on the number of public records requests received, closed, and pending; the average time OCPA took to respond to those requests; and the reasons for withholding or not providing requested documentation, if applicable.

To demonstrate a commitment to transparency and increase the relevant information it shares with its member communities, OCPA's board should develop a policy outlining the means by and circumstances under which OCPA can share key terms of its power purchase agreements with officials from those member communities without compromising the confidentiality of those terms.

To allow OCPA sufficient time to buy or sell the energy necessary to accommodate changes in a member community's participation, OCPA's board should establish a policy specifying a process for member communities to follow when changing their default rate that includes the following:

- The number of days of advance notification a member agency must provide to OCPA of its decision to change its default rate before the change occurs.
- The maximum number of times a member community may change its default rate in a given period.

To provide meaningful oversight of OCPA's efforts to monitor, measure, report, and control the market and credit risks that it is exposed to in its normal course of business, OCPA's board should do the following:

- Amend its risk management policy to alter the membership of the risk oversight committee to include a limited subset of OCPA board members that does not violate open meeting act requirements.
- Establish a schedule for the risk oversight committee to provide periodic reports on its activities to the full board.
- Direct the risk oversight committee to fulfill the functions defined in OCPA's risk management policy.

Agency Comments

OCPA indicated that it did not agree with all of our conclusions, although it did not identify any specific areas of disagreement in its written response. Nevertheless, it stated that it would consider implementing our recommendations.

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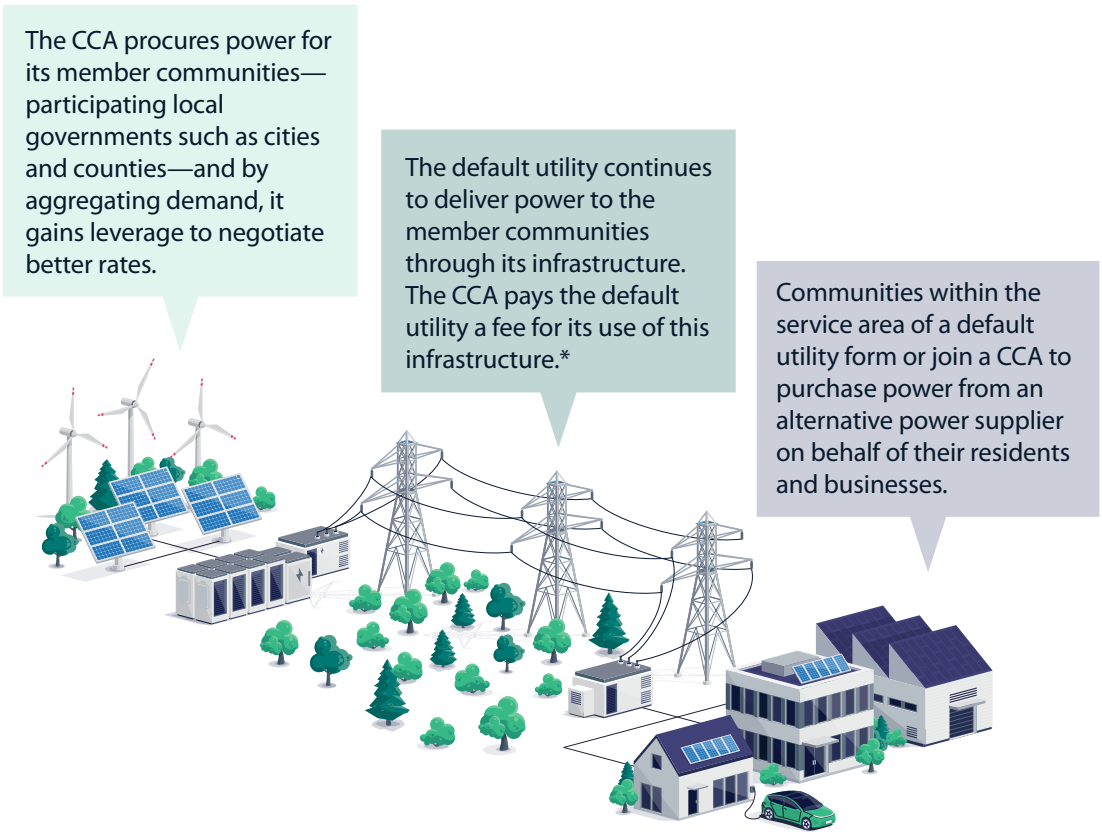
Introduction

Background

In 2002 the California Legislature enacted a law authorizing the formation of community choice aggregation (CCA) programs. As Figure 1 shows, CCA programs allow local governments to procure electrical power directly from alternative power suppliers. The CCA delivers the power to customers by using the delivery infrastructure of the existing investor-owned utility responsible for providing electricity in that area (default utility).[1] Potential benefits of CCAs include increased local control over electricity sources and higher concentrations of renewable power than offered by the default utility. As of April 2022, there were 25 registered CCAs serving customers in California.

Figure 1
A CCA Aggregates Demand and Secures Energy for Its Member Communities


The CCA procures power for its member communities—participating local governments such as cities and counties—and by aggregating demand, it gains leverage to negotiate better rates.
The default utility continues to deliver power to the member communities through its infrastructure. The CCA pays the default utility a fee for its use of this infrastructure.*
Communities within the service area of a default utility form or join a CCA to purchase power from an alternative power supplier on behalf of their residents and businesses.

Source: State law and the websites of the California Public Utilities Commission and the U.S. Environmental Protection Agency.

* The default utility is also responsible for providing metering, billing, collection, and customer service to participating retail customers.

[1] A CCA may not operate in an area served by a local publicly owned electrical utility.

OCPA Member Communities

- City of Buena Park
- City of Fullerton
- City of Huntington Beach
- City of Irvine

Source: OCPA's fiscal year 2022–23 operating budget.

Note: In December 2021, the OCPA board approved the inclusion of the unincorporated area of Orange County to OCPA. However, in December 2022, Orange County's board of supervisors voted to withdraw from OCPA.

In November 2020, the Orange County Power Authority (OCPA) was formed, as Figure 2 shows. It was created to implement a CCA for member communities within Orange County—California's third-most-populous county—that elected to join. Orange County has a total of 34 cities, including Anaheim, Santa Ana, and Irvine, each of which has a population of more than 300,000. The text box lists the current member communities that have elected to receive electrical service from OCPA.

As more communities join a CCA, overall demand for the power supplied by the CCA increases, allowing the CCA to negotiate more competitive rates and bring in more revenue to support energy projects that benefit its customers. In some cases, prices for electricity purchased from a CCA may be lower than the residential price for electricity offered by the default utility because of the CCA's collective buying power and current market trends. Under state law, utility customers within a member community's service area are automatically enrolled in a CCA program unless they opt out. The law also requires a new CCA to serve all residential customers, but it does not require that CCAs serve commercial customers.

OCPA Operations

In fiscal year 2021–22, OCPA incurred more than $36 million in total expenditures. As Figure 3 shows, other than the cost of electricity, OCPA's two largest categories of expenditures were for contract services—the professional support services that OCPA receives from external contractors—and staff compensation. OCPA's fiscal year 2022–23 budget describes its plans for a staff of 20 full-time employees; although, at the time of our review in January 2023, OCPA had filled only nine of these positions, including its chief executive officer (CEO) and chief financial officer (CFO). Among the vacancies are four positions related to power services, including a power resources director. As we describe later, OCPA has been slow to hire the staff responsible for overseeing its purchase of power. OCPA relies on external contractors and consultants for many aspects of its operations, as the text box shows.

Contracted Services

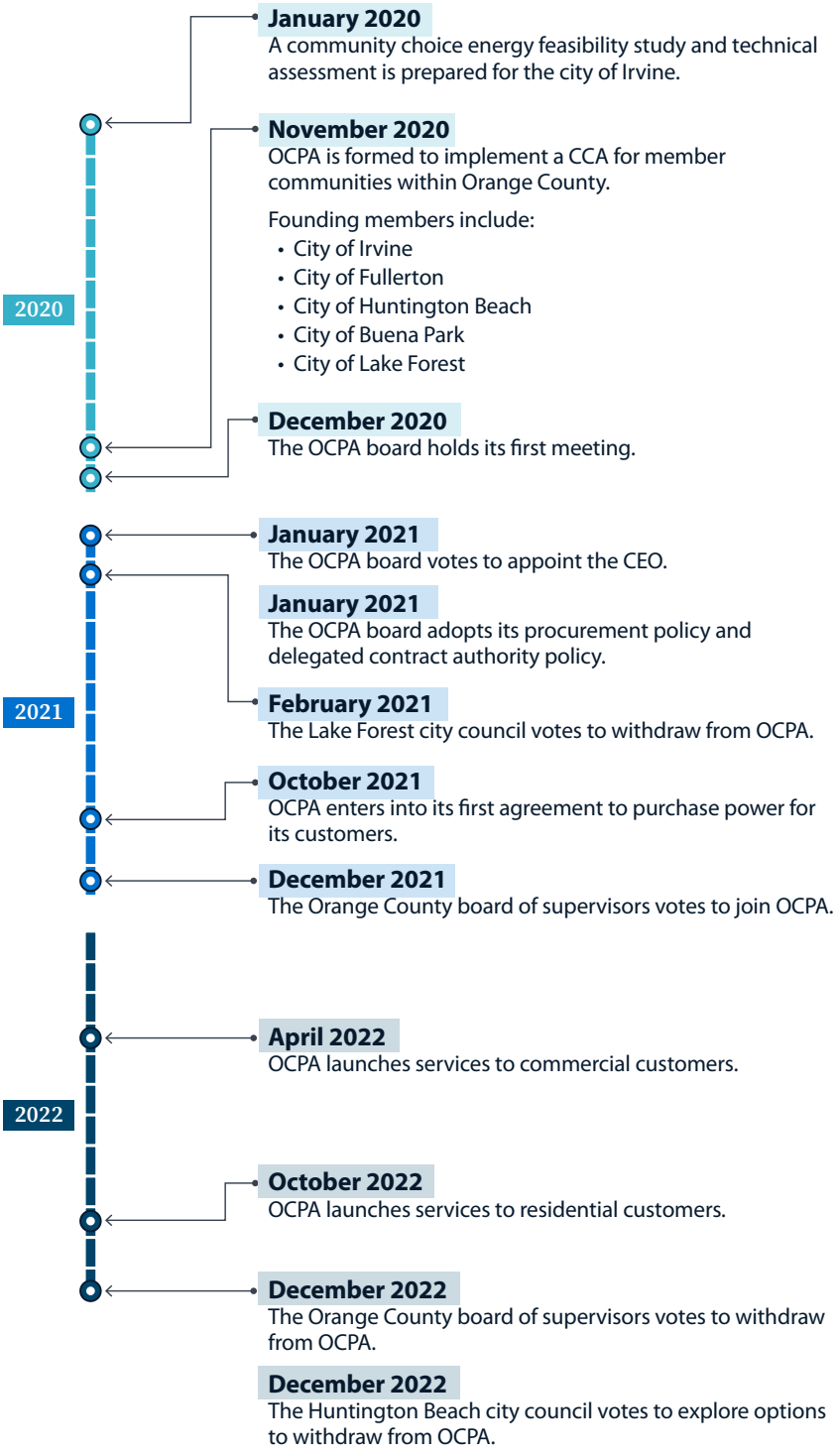
OCPA relies on contractors for a number of services, including:

- Obtaining customer usage data from the default utility
- Communicating to the default utility the amount its customers are to be billed
- Providing legal services
- Managing and staffing a customer call center
- Maintaining a database of customer information
- Supplying advice and legal representation on public records requests
- Performing marketing and outreach activities

Source: OCPA contracts with vendors.

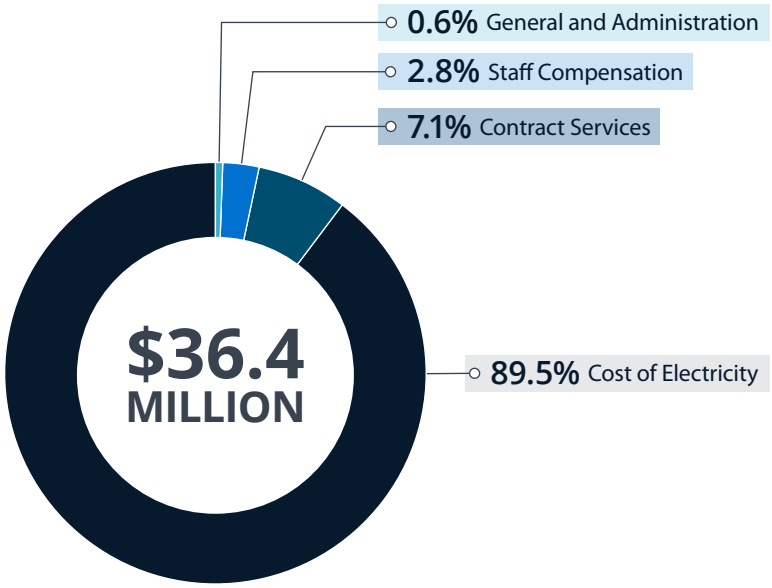
In addition, OCPA contracts with a firm (power consultant) to forecast the amount of power it will need and to manage its procurement of the power it sells to customers. Under the guidance of its consultant, OCPA purchases power by executing

Figure 2
Membership in OCPA Has Fluctuated Since Its Formation in November 2020


2020
January 2020
A community choice energy feasibility study and technical assessment is prepared for the city of Irvine.
November 2020
OCPA is formed to implement a CCA for member communities within Orange County.
Founding members include:
• City of Irvine
• City of Fullerton
• City of Huntington Beach
• City of Buena Park
• City of Lake Forest
December 2020
The OCPA board holds its first meeting.
2021
January 2021
The OCPA board votes to appoint the CEO.
January 2021
The OCPA board adopts its procurement policy and delegated contract authority policy.
February 2021
The Lake Forest city council votes to withdraw from OCPA.
October 2021
OCPA enters into its first agreement to purchase power for its customers.
December 2021
The Orange County board of supervisors votes to join OCPA.
2022
April 2022
OCPA launches services to commercial customers.
October 2022
OCPA launches services to residential customers.
December 2022
The Orange County board of supervisors votes to withdraw from OCPA.
December 2022
The Huntington Beach city council votes to explore options to withdraw from OCPA.

Source: The city of Irvine's CCA feasibility study; meeting minutes from Lake Forest city council, Huntington Beach city council, and Orange County board of supervisors; and OCPA's board minutes, press releases, implementation plan, power purchase agreements, and fiscal year 2022–23 budget.

Figure 3
OCPA's Operating Expenses Totaled More Than $36 Million in Fiscal Year 2021–22



Source: OCPA's fiscal year 2021–22 audited financial statements.

power purchase agreements, or contracts, with power suppliers that define the terms for the sale of power between the two parties. Terms may include when a renewable energy generation project will begin commercial operation, a schedule for the delivery of electricity, penalties for underdelivery, and payment and termination terms. When renewable energy is involved in the purchase, the agreement terms may also include the transfer of renewable energy certificates. These certificates increase the value of the power in question by legally certifying it as renewable energy for various purposes. The text box provides further information about these certificates. OCPA began providing services to nonresidential (commercial) customers in four member communities in April 2022 and to residential customers in those communities in October 2022. As of October 2022, OCPA offered three rate tiers corresponding to different proportions of renewable energy—with the highest being 100 percent renewable energy. As Figure 4 shows, the customer rate for the tier with the lowest proportion of renewable energy is equal to the default utility's rates. The percentage difference in the cost between the respective tiers is relatively low in part because the cost of using the default utility's infrastructure for transmitting the power represents a significant portion of the total cost in each tier. Before the onset of service, OCPA's member communities were allowed to select a default rate tier for residents and businesses in their areas to be enrolled in when service began,

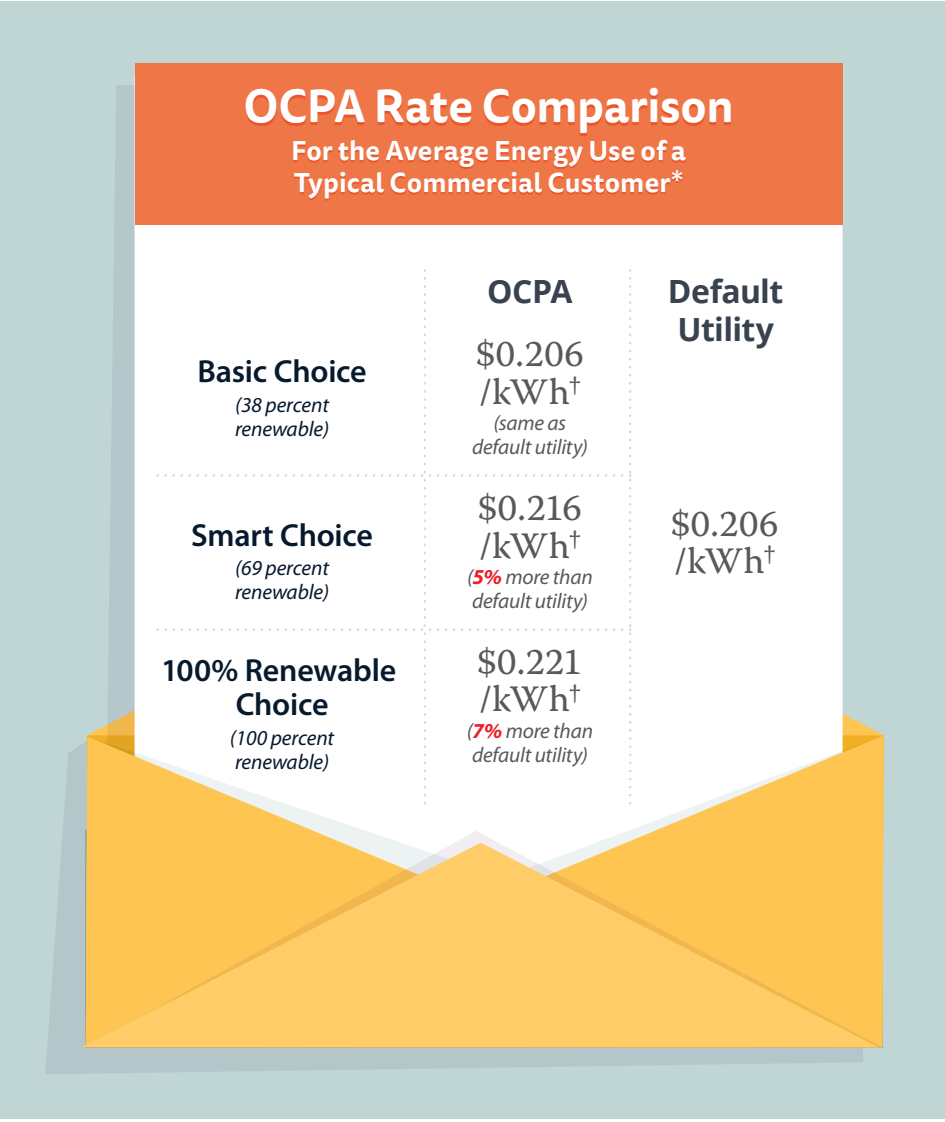
Renewable Energy Certificates

- Represent rights to the environmental, social, and other nonpower attributes of renewable energy generation.
- Are issued when electricity is generated and delivered to the grid from a renewable energy source.
- Can be sold with the physical electricity or divided and sold separately.

Source: U.S. Environmental Protection Agency's website.

after which customers could choose to change tiers or opt out of OCPA service altogether. According to OCPA's budget documents, three of OCPA's four member communities adopted the 100 percent renewable energy tier as the default plan their residents and businesses would be enrolled in, while the fourth—the city of Fullerton—adopted a lower proportion of renewable energy as the default for the customers within its jurisdiction.

Figure 4
OCPA Customers May Select a Rate That Is Comparable to the Default Utility's Rates



Source: OCPA rate flier.

Note: The default utility has programs offering up to 100 percent renewable energy, but as of January 2023 they are closed to new customers.

* OCPA rates as of April 2022.

† kWh refers to kilowatt hours.

Customers' ability to opt out of OCPA's services makes OCPA different from many traditional public services, such as water and wastewater. If member communities choose to leave OCPA, or if customers within the member communities opt out of its service, those choices reduce the amount of power OCPA can sell and—by extension—its gross revenues. Therefore, OCPA has a business need to follow practices that engender trust and thus help it to retain customers. However, despite its relatively recent formation, OCPA has been the subject of scrutiny and criticism from members of the media, members of the public, and certain other entities, including the Orange County Grand Jury. These parties have raised concerns about OCPA's contracting practices and transparency. The city of Irvine—one of OCPA's founding member communities—approved an independent audit of OCPA in June 2022, and Orange County itself commissioned two audits that were completed in December 2022.

Audit Results

The Number of Customers Opting Out Could Negatively Affect OCPA's Operations

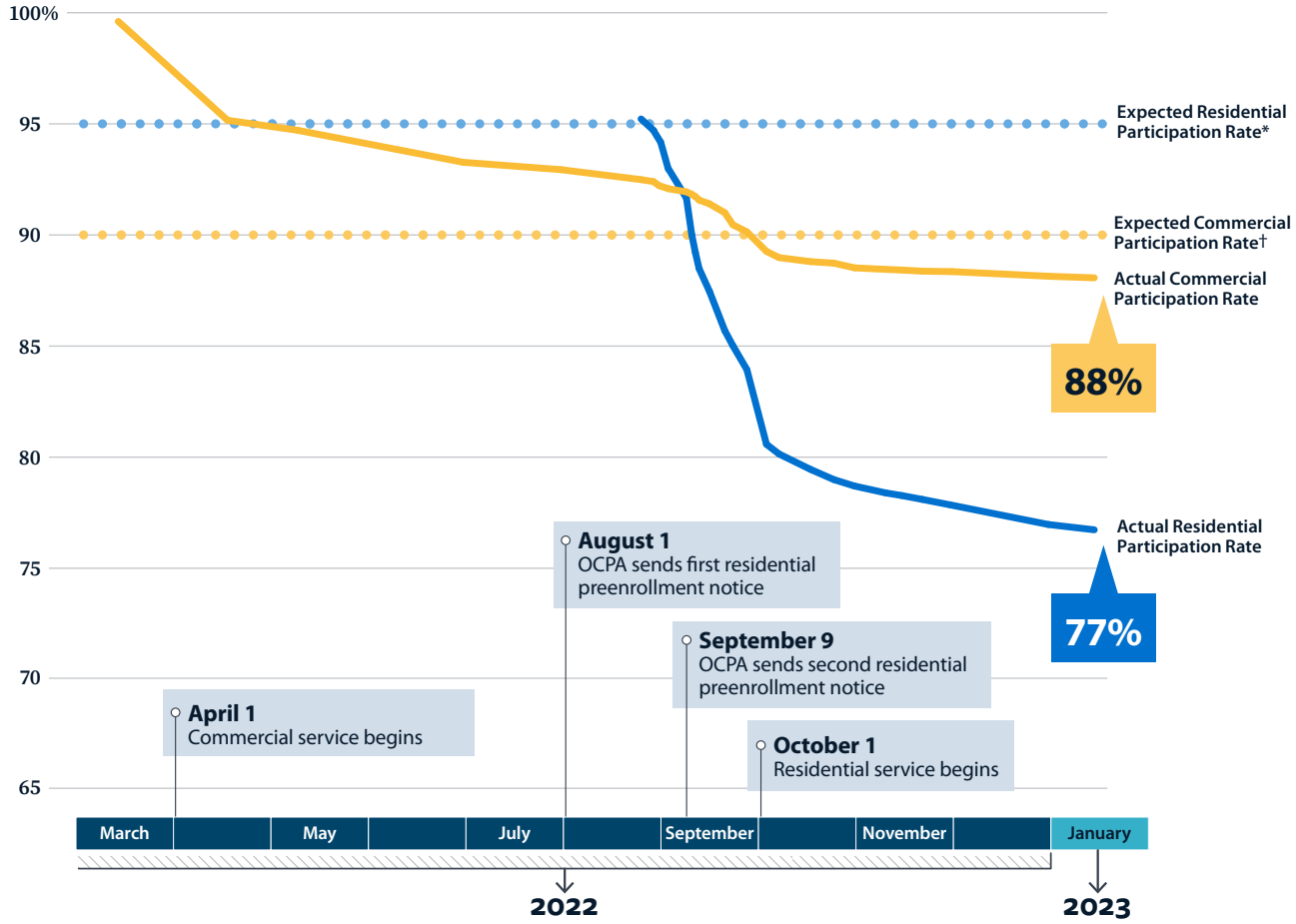
One of the more important measures a CCA must monitor is its participation rate. According to state law, a CCA must inform customers in member communities at least twice before they are automatically enrolled that they have the right to opt out of the CCA without penalty. The proportion of eligible customers who receive service from the CCA is expressed as its *participation rate*.

In the months since OCPA began providing commercial service in April 2022, more customers than expected have opted out. A January 2020 community choice energy feasibility study and technical assessment (feasibility study) prepared for the city of Irvine assumed a residential participation rate of 95 percent and a commercial participation rate of 90 percent. OCPA's budget model for fiscal year 2022–23 makes the same assumptions. According to an implementation plan that OCPA's board approved in December 2020 and amended in December 2021, these anticipated participation rates of 90 to 95 percent were based on reported opt-out rates for other California CCAs.

However, as Figure 5 shows, OCPA's residential customer participation rate had dropped to 77 percent as of January 2023—only a few months after it began to provide this service. The participation rate for commercial service, which launched in April 2022, was 88 percent as of January 2023. Not only are OCPA's participation rates already lower than it projected, they are also below the participation rates of other California CCAs. According to the feasibility study, recent CCAs' participation rates have ranged from 90 to 97 percent of potential customers. In addition, other CCAs' experiences indicate that more customers may opt out as time goes on. For example, communities added more recently to Marin Clean Energy (MCE), the first CCA in California, have higher participation rates than communities that joined MCE in the past. In a June 2018 presentation, MCE indicated that the average participation rate for the communities that joined MCE before 2018 was slightly more than 83 percent, whereas communities that began receiving service in 2018 had average participation rates of nearly 91 percent.

Low participation rates reduce OCPA's total revenues and can affect its net income. OCPA's CFO asserted that, if other factors remain the same, changes in OCPA's participation rates have a proportional relationship to its revenue and the amount it spends on energy. Therefore, lower participation rates reduce OCPA's operating revenue and, to a slightly lesser degree, its energy costs. OCPA does not have an estimate of the reduction in its fiscal year 2022–23 revenue that is specifically attributable to the lower-than-anticipated participation rate. However, we estimate, based on the $302 million in annual revenue OCPA originally projected, that the difference between its projected participation rates and its current participation rates could reduce its expected gross revenue by more than $22 million in fiscal year 2022–23 alone. Although there are other factors that our estimate does not account for, and which could increase or decrease this amount, OCPA's CFO confirmed that our method for estimating the reduction was not unreasonable. The CFO also stated that customer opt-outs have a minimal impact on the financial bottom line because

Figure 5
OCPA's Participation Rates Are Below Expected Levels



Source: OCPA participation data, implementation plan, press releases, and contractor invoices.

* Includes residential, lighting, and agricultural customers.

† Includes commercial and industrial customers.

OCPA can reduce the amount of power it procures going forward to account for a lower number of customer accounts and can sell excess power. After we shared our estimate with the CFO, she provided an estimate that the majority of the reduction in OCPA's gross revenue would be offset by a reduction in its total cost of energy and that OCPA's net income would be reduced by approximately $1.4 million. However, notwithstanding potential additional cost savings that we did not quantify but that could result from the reduction in the number of customers OCPA must serve, a $1.4 million reduction represents 30 percent of OCPA's budgeted net income for fiscal year 2022–23. Thus, these customer opt-outs may have a significant impact on OCPA's financial bottom line. Further, even though the CFO stated that OCPA will always be able to sell its excess power and may be able to sell that power for more than it paid, she acknowledged that there is no guarantee that OCPA will be able to sell the power for as much as it paid.

Low participation rates may also affect the economies of scale that OCPA needs to ensure that it can provide power for the lowest price possible. One reason is that participation rates affect the amount of fixed, nonenergy costs that OCPA passes on to each customer. OCPA's fiscal year 2022–23 budget notes that if it experiences higher-than-assumed opt-out rates, its fixed costs will be spread over a smaller amount of power sold. In other words, prices would increase for the remaining customers because each of them would have to pay a greater portion of the fixed costs. In addition, research has found some evidence that CCAs that sell more electricity enjoy lower per-unit energy costs.[2] Similarly, OCPA's own website explains that as power demand increases, OCPA will be able to negotiate more competitive rates and bring in more revenue. To the extent it is successful in doing so, it may be able to offer its customers lower rates. OCPA staff disagreed that the opt-out rate is a key consideration for power suppliers when negotiating energy prices, and the CFO indicated that she believes that when negotiating prices power suppliers are more concerned with other factors, such as OPCA's liquidity and whether OCPA has an investment-grade credit rating. Although credit rating agencies have not yet evaluated OCPA's creditworthiness, the published ratings of some other California CCAs cite those CCAs' participation rates as key credit risks.

Although a low participation rate among its current member communities hinders OCPA's goals of increasing both renewable energy use and local control of energy production, OCPA can likely absorb a significant opt-out rate because of its relative size. When measured by the number of customer accounts, OCPA is more than twice as large as many CCAs currently operating in the State. Nevertheless, a CCA feasibility study commissioned by the city of Irvine that preceded OCPA's formation characterized an 80 percent participation rate for a CCA as a "worst-case scenario." Even though the study stated that a CCA could achieve its financial objectives with that participation rate, it is notable that OCPA's residential participation rate has fallen below this level at such an early stage, and the low rate indicates significant concerns about OCPA's operations among its potential customers.

The prospect of losing entire member communities presents an even more significant and pressing problem. In response to concerns about OCPA's operations, including its transparency and accountability, in August 2022, the Orange County board of supervisors requested an audit of OCPA. Audit reports of OCPA's operational performance and business processes were published in December 2022. They identified issues with OCPA's contracting practices and oversight, its communications regarding customer rates, and other potential governance and transparency issues. Following the release of those audit reports, the board of supervisors voted to withdraw from OCPA, reversing its plan to have OCPA provide power to the county's unincorporated areas. Although the decision did not apply to individual member communities of the CCA, it foreshadowed additional concerns for OCPA. Later on the same day of Orange County's vote, the Huntington Beach city council directed city staff to explore options to withdraw as well. If OCPA is unable to adequately address its member communities' concerns about transparency and accountability, its ability to retain or add the customers necessary to realize its goals may be limited, and it would risk dissolution or customer losses of a magnitude that could pose a threat to its ability to offer competitive rates for electricity.

[2] Trumbull, Kelly, et. al, "The Role of Community Choice Aggregators in Advancing Clean Energy Transitions: Lessons from California." UCLA Luskin Center for Innovation, Los Angeles, Oct 2020. https://tinyurl.com/CCAreportlink

Some OCPA Practices Lack Proper Board Oversight and Could Contribute to Negative Public Perception

In part due to insufficient oversight by its board, OCPA's staff repeatedly circumvented key elements of its contracting policies. As a result, OCPA cannot demonstrate that it acted in its customers' best interest when it executed $1.8 million in marketing and financial services contracts. We also reviewed other areas in which OCPA is in compliance with the legal requirements we evaluated but could nonetheless improve its processes for sharing information with its member communities and its customers.

OCPA Has Engaged in Contracting Processes That Were Neither Competitive Nor Sufficiently Accountable

Shortly after it was formed, OCPA established procurement policies that it later circumvented and violated. In January 2021, OCPA's board adopted two administrative policies: its procurement policy, which established its procurement practices, and its delegated contract authority policy (contract delegation policy), which established the parameters of its CEO's authority to execute, amend, and alter contracts. According to the policies, both are intended to facilitate efficient business operations. As Table 1 illustrates, these policies establish requirements for the solicitation, evaluation, and board approval of contracts, which vary depending on the value of those contracts. In fiscal year 2021–22, contract services were OCPA's second-largest category of expenditures.

Table 1
OCPA's Policies Subject Larger Contracts to More Rigorous Procurement Processes and Oversight

	CONTRACTS OF LESS THAN $10,000	CONTRACTS BETWEEN $10,000 AND $50,000	CONTRACTS OF MORE THAN $50,000 AND UP TO $125,000	CONTRACTS OF MORE THAN $125,000 IN A GIVEN CONTRACT YEAR OR TERM
Solicitation requirements	No formal or informal proposals required.	Informal verbal proposals from at least three providers.	Informal written proposals from at least three providers.	Formal bidding: OCPA must issue a formal request for proposals (RFP), request for qualifications (RFQ), or similar competitive instrument.
Procurement process	Staff must seek the lowest-cost supplies and highest-quality services available.	Staff must maintain notes in OCPA's records about the verbal proposals, including information about the provider and the amount of the proposal.	Informal proposals must include key information, such as the amount of the proposal and the work to be performed.	Proposals must be subjected to a set of criteria and a scoring system, and must be reviewed and evaluated by relevant OCPA staff and an evaluation committee selected by the CEO or members of a designated board committee.
Board's role	None.	None.	All new contracts must be reported at the next regular board meeting.	All contracts are subject to board approval before final execution.

Source: OCPA's procurement policy and delegated contract authority policy.

Note: Regardless of the contract amount, OCPA staff must endeavor to secure the highest-quality professional services available. However, OCPA is not required to award a contract for services to the lowest-cost proposal, unless required by California law.

We identified several instances in which OCPA's execution and amendment of a series of contracts for marketing services violated its policies and skirted its board's oversight. First, OCPA could not demonstrate that it evaluated the proposals it received for those services, as its policy requires. In March 2021, OCPA issued a request for qualifications (RFQ)—as required by its procurement policy for the purchase of goods and services totaling more than $125,000 in any given contract year or term—for marketing and communications services. According to its CFO, OCPA received seven proposals in response to the RFQ. Under the OCPA policies summarized in Table 1, each of these proposals should have been evaluated according to a set of criteria and a scoring system. According to the CEO, he and another OCPA staff member—who were the only two employees at the time—evaluated the proposals before making a selection. Nearly a year later, the CEO asserted to the board that OCPA had reviewed and ranked these seven proposals. *However, the CEO could not provide any documentation of this review nor the proposals' relative ranks. Without this documentation, it is not clear what factors OCPA evaluated when making its selection, and it cannot demonstrate its rationale for selecting the winning proposal.*

After selecting the winning proposal, OCPA circumvented requirements of its procurement policy by splitting the proposal it selected, meaning that it entered into multiple contracts for services contained in a single proposal. According to its procurement policy, OCPA cannot split purchases into more than one purchase in order to avoid its competitive procurement requirements. Although OCPA executed three separate contracts for marketing and communications services, the related response to its RFQ was a single proposal from an entity that intended to use two subcontractors. By executing three separate contracts, OCPA also avoided the policy requirement described in Table 1 that it obtain its board's approval for all contracts of more than $125,000 before their final execution. As Figure 6 shows, by executing a separate contract with each of the three entities—instead of a single contract with the lead contractor who would oversee the two subcontractors, as the proposal described—OCPA reduced the value of the individual contracts to a level that did not require several key oversight mechanisms that would have applied had it executed a single contract for the same services.

When we asked the CEO to explain why OCPA executed a separate contract with each entity, he contended that the contracts were not split. He stated that the RFQ provided OCPA with the authority to award individual contracts for separate scopes of work and services and that doing so was warranted given the distinct scope of services provided by each company. Although OCPA's RFQ did include such a statement, the effect of OCPA's awarding separate contracts in this way was to bypass the requirements established in its policy that prohibit the splitting of purchases and require the board's approval for contracts of more than $125,000. These measures were designed to provide transparency and accountability, and they would have been necessary had OCPA entered into a single agreement for an equivalent total amount with the lead contractor (Contractor 1) as the contractor proposed. When we asked the CEO why he executed three contracts at this exact threshold, he explained that the amounts were reasonable in his judgment, given the equal work that was needed, and that one contractor was not performing a smaller, specialized task as a traditional subcontractor would. However, we question whether it was a coincidence that the value of the work to be done by each of these contractors was

just below the threshold in OCPA's policy for disclosure to the board. Further, we were unable to identify any administrative cost savings resulting from splitting this proposal, reinforcing the appearance that doing so was for the purpose of evading the requirement for obtaining the board's approval.

Figure 6
OCPA Circumvented Procurement and Board Oversight Requirements When It Split a Single Proposal Into Separate Contracts With Three Contractors

SELECTED PROPOSAL
Requirements for Contracts in Excess of $125,000
Subject to a set of criteria and scoring system
Reviewed and evaluated by relevant OCPA staff and an evaluation committee or board committee
Subject to board approval before final execution
TOTAL COST OF EXECUTED CONTRACTS: $150,000
Cost not to exceed $50,000
CONTRACTOR 1
Cost not to exceed $50,000
CONTRACTOR 2
Cost not to exceed $50,000
CONTRACTOR 3

By splitting the desired services presented in the proposal into three separate contracts, **OCPA avoided requirements** established in its procurement policy.

Source: OCPA's procurement policy, board meeting minutes, executed contracts, and contractor responses to an OCPA RFQ.

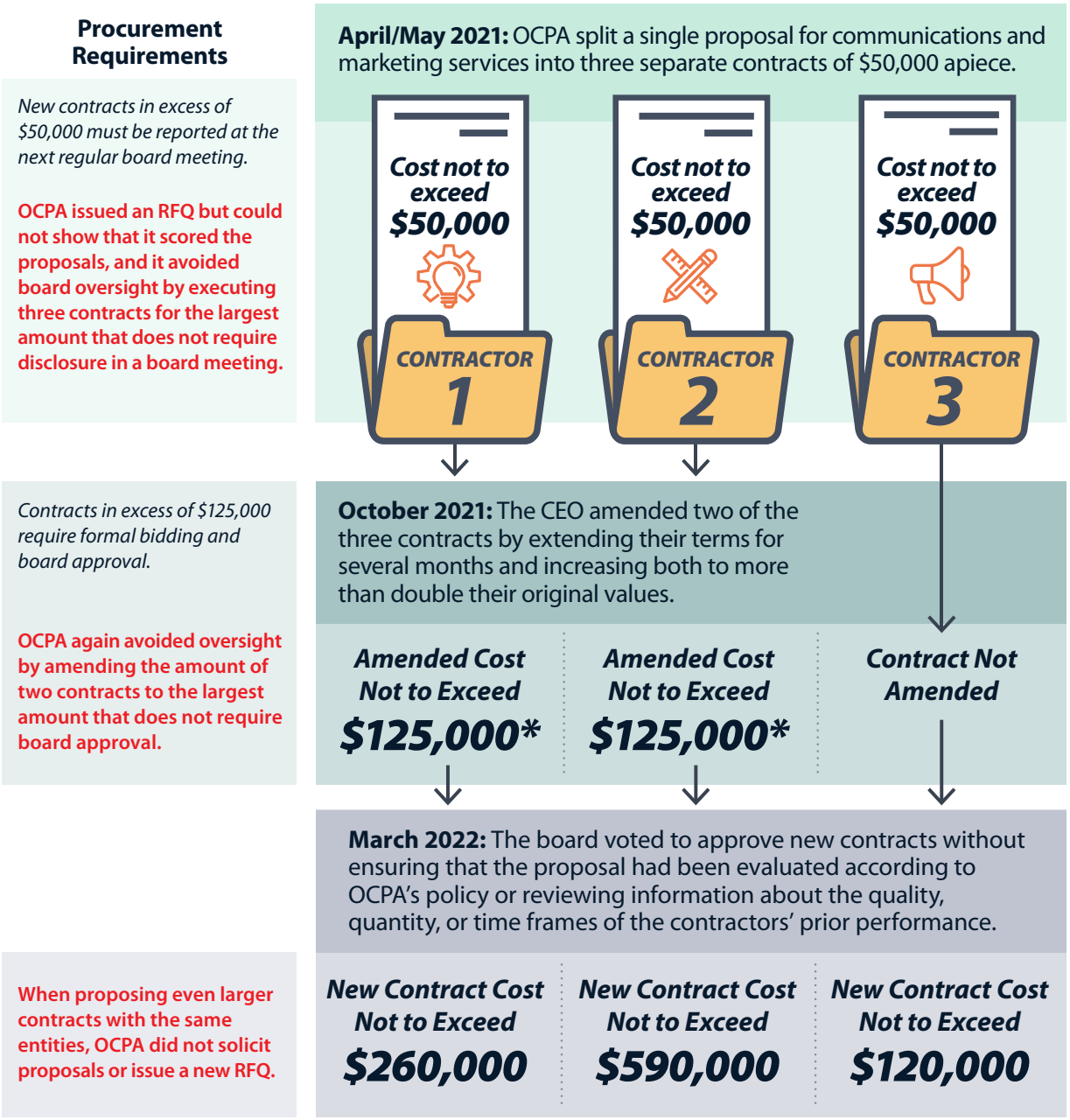
OCPA once again avoided board oversight when it significantly increased the amount of two of the three marketing contracts described above. In October 2021, the CEO amended two of the contracts (for Contractors 1 and 2), extending their terms by an additional eight months and, as Figure 7 shows, more than doubling the maximum amount of each from $50,000 to $125,000. These increases resulted in the amended amounts being at the exact limit under which the CEO has authority to execute contracts without prior board approval. Specifically, OCPA's policy permits the CEO to use an informal bidding process to select and enter into contracts of up to $125,000 for goods and services without prior board approval, but it also requires that all new contracts of more than $50,000 be reported at the next board meeting. However, *the CEO said that he was unsure whether he had reported the two amended contracts to the board, and our review of minutes and video recordings from board meetings held during that time found no evidence that he did so publicly.* Although the policy does not state that this requirement applies to amended contracts, the CEO asserted that he believes the contract thresholds in OCPA's procurement policy do apply to contract amendments.

Finally, OCPA's board approved new, larger contracts with the same three contractors to continue providing marketing services without sufficient assurance that those contracts represented the highest-quality professional services or that they were selected in accordance with its policies. In March 2022, the CEO requested that the board approve new contracts with these three contractors for a combined value of nearly $1 million.[3] According to the CFO, OCPA did not solicit bids for the new contracts, despite the requirement in its policy that it use a formal bidding process for the purchase of goods or services in excess of $125,000 in any given contract term or year. When requesting approval of the new contracts, the CEO reported to the board that OCPA had issued an RFQ for these services in 2021 and that OCPA staff had selected the three contractors based on their overall responsiveness. However, as we describe previously, OCPA could not provide us with evidence of the selection process that the CEO described. Further, although a staff report to the board described the services and products that the three contractors had already provided to OCPA, the report did not address the quality of the work they had performed, nor did it indicate that OCPA was not following the process required by its policy when entering into these agreements for significantly larger amounts or explain why it was appropriate to do so. Despite these issues, OCPA's board voted unanimously to approve new contracts with these three contractors and delegate their execution to the CEO.

In at least one other instance, OCPA engaged in questionable contract management by significantly increasing the amount of a contract without its board's approval. In December 2020—shortly after OCPA was formed—OCPA's contracted legal counsel recommended that the board approve a contract for financial services that was not to exceed $25,000 and delegate authority to the board's chair to execute the contract, which the board approved. However, the chair instead executed a contract,

[3] The OCPA staff's report to the board disclosed the amounts for only two of the three fiscal years covered by these contracts, the amounts totaling $720,000. The CEO stated that the amounts for these two fiscal years were disclosed, that the report clearly states the agreements cross multiple years, and that the full text of each contract with financial details was attached to the agenda. Although he agreed that the sum for all fiscal years is not in the staff report and that the report could be improved, he insisted that the information presented was not inaccurate.

Figure 7
OCPA Repeatedly Circumvented Its Procurement Procedures as Its Spending for Marketing Services Grew to a Total of Nearly $1.3 Million


Procurement Requirements
New contracts in excess of $50,000 must be reported at the next regular board meeting.
OCPA issued an RFQ but could not show that it scored the proposals, and it avoided board oversight by executing three contracts for the largest amount that does not require disclosure in a board meeting.
April/May 2021: OCPA split a single proposal for communications and marketing services into three separate contracts of $50,000 apiece.
Cost not to exceed $50,000
CONTRACTOR 1
Cost not to exceed $50,000
CONTRACTOR 2
Cost not to exceed $50,000
CONTRACTOR 3
Contracts in excess of $125,000 require formal bidding and board approval.
OCPA again avoided oversight by amending the amount of two contracts to the largest amount that does not require board approval.
October 2021: The CEO amended two of the three contracts by extending their terms for several months and increasing both to more than double their original values.
Amended Cost Not to Exceed $125,000*
Amended Cost Not to Exceed $125,000*
Contract Not Amended
When proposing even larger contracts with the same entities, OCPA did not solicit proposals or issue a new RFQ.
March 2022: The board voted to approve new contracts without ensuring that the proposal had been evaluated according to OCPA's policy or reviewing information about the quality, quantity, or time frames of the contractors' prior performance.
New Contract Cost Not to Exceed $260,000
New Contract Cost Not to Exceed $590,000
New Contract Cost Not to Exceed $120,000
Total Amount to Be Paid to These Contractors
$1.27 Million

Source: OCPA's contracting policies, board meeting minutes, and executed contracts and amendments.

* OCPA increased the amount of these contracts by $75,000 to a total of $125,000.

ending in June 2021, for compensation not to exceed $100,000. As a result, OCPA executed a contract for up to $100,000, despite the board authorizing a contract for only $25,000.

After he was hired by OCPA, the CEO increased the amount of this financial services contract without board approval. In September 2021, the CEO executed an amendment to the original contract, increasing the contract amount to $135,000 and extending its term by six months.[4] The CEO did not seek the board's approval—as policy requires for contracts valued at more than $125,000 and as Table 1 shows—before executing the amendment. The CEO asserted that after further review, he believes that he should have executed a new sole-source contract instead of an amendment. Nevertheless, because the CEO executed an amendment, the total exceeded the amount he was authorized to contract for on his own authority. In December 2021, OCPA increased the amount and duration of the contract again by establishing a not-to-exceed amount of an additional $162,500 to be paid over the following 12 months, although it did obtain the board's approval in this instance.

At other levels of government, amendments that cause contracts to exceed policy thresholds also trigger the corresponding policy requirements. However, OCPA did not issue an RFQ for either increase despite the fact that the first amendment caused the total amount of the contract to exceed $125,000 and the second exceeded that amount on its own. *In December 2022, the OCPA board approved yet another contract amendment increasing the maximum cost to approximately $230,000. Once again, it did so without the use of an RFQ. Notably, when the board approved the very first contract with this company in December 2020, a board member asked whether OCPA could send out requests for proposals to local accounting firms after the initial term and was assured by its contracted legal counsel that it could.*

OCPA has avoided advertising its contract opportunities and competitive bidding processes by repeatedly amending its financial services contract. As described above, each of the amendments to OCPA's financial services contracts presented to its board were for more than $125,000, the threshold that would have triggered an RFQ or other competitive bidding process for new contracts under OCPA's policy. For the two most recent amendments, OCPA inserted entirely new terms for the period of the contract and new spending limits for those periods. When we asked why OCPA amended the financial services contract instead of issuing a new contract, the CEO stated that doing so provides a transparent trail for changing the term and compensation amount because new contracts do not have the context that is present in amendments. However, our review of the contract amendments did not identify any relevant context about prior agreements' dollar amounts. Further, by approving these amendments, OCPA's board has approved contract amounts that exceed the threshold above which OCPA must conduct a competitive bidding process for new contracts, according to its policy, despite the fact that it has never issued an RFQ for these services. As a result, it has deprived itself of the opportunity to review the qualifications of other potential service providers and the cost savings it might obtain through a competitive process.

4 From July 2021 through November 2021, this company billed OCPA for a total of $25,000 before OCPA executed another contract amendment with it for a subsequent period and larger dollar amount.

Although our review of OCPA's contracting process was limited to a total of 12 contracts and contract amendments with the four entities discussed above, the problems we found with the contracts for each of the four entities suggest that the issues we describe here may be more widespread. Further, the pattern of contracting practices we identified at OCPA that were neither competitive nor accountable to the board's oversight poses a risk to the organization. Specifically, in addition to raising questions about whether customers are receiving the highest-quality professional services for contracts and amendments totaling nearly $1.3 million for marketing services and more than $500,000 for financial services, the issues we identified expose OCPA to more general criticism of its management practices because it cannot demonstrate that it selected these contractors through competitive processes. For these reasons, the board needs to better define OCPA's procurement policies related to contract amendments and provide meaningful oversight to ensure that OCPA is obtaining the highest-quality services and lowest-cost supplies in compliance with its policies, especially for contracts that are initially executed without board involvement.

OCPA Should Improve the Quality of Other Administrative Practices to Increase Transparency and Build Trust With Customers

As we describe in the Introduction, OCPA has been criticized by a number of entities for not being sufficiently transparent about its operations. We found that OCPA generally complied with the legal requirements we reviewed related to transparency and accountability. For example, OCPA has posted its financial statements for fiscal years 2020–21 and 2021–22—which include its total revenues and expenditures—on its website. Additionally, we found that in most cases it has complied with the requirement to, within 10 days, notify the person making a request under the California Public Records Act (public records request) of its determination about whether the request sought copies of disclosable records. However, even in areas in which it complied with the law, there are a number of ways in which OCPA could improve its operations to build trust with its customers and the public at large.

Requirements for Responding to a Public Records Request

- State law provides every person with the right to inspect any public record with certain exceptions, requires that public records are open to inspection during the office hours of state and local agencies, and requires state and local agencies to make the records promptly available to any person upon the payment of fees for the costs of duplication or a statutory fee.
- State law generally requires that each agency, upon receipt of a request for a copy of records, must determine within 10 days whether the request seeks copies of disclosable records and promptly notify the person making the request of its determination and reasons.
- When a member of the public requests to inspect a public record or to obtain a copy of a public record, the public agency must assist them to make a focused and effective request, to the extent reasonable.

Source: State law.

OCPA has been criticized for its handling of public records requests, including allegations that it has ignored or denied requests from members of the public and city council members from OCPA's member communities. According to the CEO, he believes that this criticism is likely the result of requesters not understanding the public records request process or not being content with the response they receive. State law allows the public to request the records of state and local agencies, as the text box describes. Currently,

members of the public may submit public records requests directly through the OCPA website. According to the CEO, OCPA's contracted legal counsel reviews, evaluates, and coordinates the responses to all of the public records requests OCPA receives.

With one exception, we did not identify any evidence that OCPA had failed to provide an initial response within 10 days to the public records requests that we reviewed, although it took additional time to provide requested records or notify the person making the request of its determination about whether records were disclosable. Its records indicate that OCPA received at least 23 public records requests from July 2021 through early October 2022. Roughly half of these requests were unresolved at the time of our review in October 2022. For the requests that it had resolved, OCPA took an average of 53 days to do so. However, the oldest open request, as of the date on which we were provided the data in October 2022, had been made 464 days earlier, and at that time a total of five requests older than six months remained open. The CEO explained that all public agencies, including OCPA, have limited staff to respond to public records requests and that it takes longer to respond to requests that are broad or otherwise poorly defined.

Our review of a selection of closed requests did not identify any instances in which OCPA's records suggest that it did not provide any response. The electronic data that OCPA provided from its tracking system did not include information about what documents OCPA provided in response; however, OCPA told us that it had copies of all of the requests and the individual records that it provided in response. Because of the cost limitations imposed on this audit, we did not attempt to determine whether OCPA appropriately provided or withheld requested documentation. In addition, the data also included three duplicate requests and one erroneous entry related to a separate administrative matter, making it more difficult to easily determine the total number of individual requests. According to OCPA's contracted legal counsel, these entries were either simple user errors resulting from staff not deleting records from the system or were created because more than one staff member was working on a case and entries had been created separately.

Although our review of OCPA's public records requests generally did not identify violations of state law, OCPA was limited in its ability to quickly and clearly demonstrate that it had appropriately responded to public records requests.
Given the criticism OCPA has faced about its public records process, we expected that it would have reviewed this process and would be able to readily demonstrate the appropriateness of its handling of requests. However, when we inquired about the nature of the requests and the timeliness of OCPA's responses, OCPA and its contracted legal counsel had to manually extract data from its tracking system and source documentation to demonstrate the dates on which OCPA received and responded to requests.

Further, when we asked whether OCPA and its contracted legal counsel have formally documented the procedures for processing public records requests, the CEO stated that OCPA and its counsel have an agreed-upon process that all participants follow but that they have not written a document with procedures. It is possible that the lack of written procedures have contributed to the limitations

we identified with OCPA's handling of public records requests. Regardless of whether the specific criticism OCPA has faced on this issue has been warranted, its management and board should have an interest in addressing any negative public perception by ensuring that OCPA can provide accurate information that clearly and conclusively demonstrates that it has made appropriate and timely responses to public records requests.

Similarly, OCPA could demonstrate a commitment to transparency by doing more to appropriately and safely share additional information about its power purchase agreements with the governing bodies of its member communities. Various outside parties have criticized OCPA for a lack of transparency, including an elected official from an OCPA member community who criticized OCPA for not providing details about power purchase agreements in response to a public records request. These requests may stem from a well-intentioned desire for assurance that OCPA has the power capacity needed to serve its members, and the critiques appear to arise from the requesters' misunderstandings about the confidentiality of the agreements' terms. Specifically, state law allows OCPA to keep certain details of its power purchase agreements confidential, such as the price of the power. In addition, OCPA's agreements with its suppliers often include a confidentiality clause.

When we asked OCPA about how it might balance these confidentiality provisions with the interest from its member communities, its contracted legal counsel indicated to us that it is pursuing the use of nondisclosure agreements to provide unredacted copies of its purchase agreements to at least two of its member communities for different reasons. To the extent OCPA follows through on this process and develops clear parameters under which such protected sharing of information would be appropriate, it may be able to increase the flow of information and alleviate the interested parties' concerns, potentially increasing the likelihood that they remain a part of OCPA and reducing the criticism directed at OCPA publicly.

Ensuring open and transparent board meetings is another way in which OCPA can demonstrate a commitment to good governance practices of transparency and accountability. Although we did not identify any instances in which OCPA did not comply with the open meetings requirements in state law that we reviewed, there was insufficient evidence for us to make a determination regarding certain requirements. For example, we were unable to determine whether the public reports of actions the OCPA board took during closed sessions—reports that are required by law—were accurate. Although OCPA issued public agendas that described allowable reasons for the closed sessions we reviewed, it does not generate meeting minutes for its closed sessions. However, there is no legal requirement that boards of local government agencies do so. We were also unable to determine whether OCPA complied with a requirement in state law that it post an agenda at least 72 hours before a regular meeting because the software OCPA uses does not generate the information needed to verify when information was posted on the website. The Legislature enacted the 72-hour notice requirement to help ensure that people could exercise their constitutional right to access government information. Ensuring that it has the information necessary to demonstrate its compliance with these requirements and the intent of the law could help OCPA address criticism about the transparency of its public meetings and may increase public trust.

Finally, OCPA's website currently lacks certain information that may help it attract and retain customers. Its website contains general information for current and potential customers, including an explanation of how CCAs work and a list of reasons for customers to participate in OCPA. However, its site lacks the type of information that other CCAs provide describing specifically how they promote local renewable energy projects or programs. Further, the website does not quantify accomplishments that might help OCPA attract or retain customers. For example, Marin Clean Energy's website provides data on how much money its customers have saved and on the amount of greenhouse gas emissions eliminated because customers have used its services, as well as information about the generating capacity and location of its local sources of renewable energy. Another CCA, East Bay Clean Energy, describes on its website community investments it has made outside of its primary function of obtaining and supplying power, such as a $12.75 million transportation electrification program. That site also provides quantifiable information on why customers may want to choose East Bay Clean Energy's services, such as dollars invested in local projects. Other CCAs' websites that we reviewed also provide data on customers' savings and participation rates.

OCPA could improve its customers' perception of the value it provides by updating its website with relevant, local accomplishments as it continues to operate. Because OCPA began providing residential service in October 2022, it might not yet have significant information to provide for some of these topics. For example, as we discuss further in the following section, in the future OCPA plans to use its own data on its customers' power use. Although it does not currently possess a full year of such data, OCPA has access to some types of information presented by other CCAs that it could add to its website. For instance, it could provide general information about the reductions in greenhouse gas emissions due to its customers' using a higher proportion of renewable energy. OCPA's CEO agreed that providing more information on OCPA's website, such as its accomplishments and related information, would be beneficial.

Had OCPA provided more information to the public, it might have avoided criticism for some decisions that were made by its member communities rather than by the CCA. *Specifically, some customers have complained that their electricity rates increased. However, the responsibility for higher rates is more appropriately attributed to OCPA's member communities.* The member communities could have chosen OCPA's basic choice tier as the default for their residents, which consists of at least 38 percent renewable energy and costs about the same as the default utility's rates. Instead, three of OCPA's four member communities adopted the 100 percent renewable energy tier for the customers in their areas, and the other chose the second-highest tier, or 69 percent renewable energy, for its residential and commercial customers. Those plans were priced at approximately 7 percent more for the 100 percent renewable energy option and 5 percent more for the 69 percent renewable option.

Although it was the member communities that chose the higher-cost tier as the default option for customers, OCPA may have been able to avoid some of the criticism leveled at it if it had provided more information to customers through other means. For example, the media release OCPA used to inform the public that it had begun

serving residential customers accurately described that customers could move between tiers at their discretion, but it did not describe the default tiers the cities had selected for their residents.

OCPA Needs to Strengthen Certain Planning and Operational Processes

OCPA used outdated information in its fiscal year 2021–22 budget that caused its projections of customer power usage to be unreliable. These projections have, in turn, resulted in OCPA forecasting more net income than it actually earned, although some of the data limitations may be beyond OCPA's direct control. Moreover, despite having purchased or committed to purchase more than $1 billion in power and supply capacity, OCPA has not ensured that it has staff able to effectively oversee the external contractors who advise it regarding those purchases, and it could not demonstrate compliance with its policy intended to mitigate financial and operational risks.

Weaknesses in OCPA's Data and Planning Have Resulted in Unreliable Budget Projections

Issues with its planning and power use data affected OCPA's operating budget for fiscal year 2021–22, the first year in which it provided services to its customers. In March 2022, OCPA's board approved a midyear update to its fiscal year 2021–22 operating budget. In contrast to the forecasted $4.5 million in net income shown in the fiscal year 2021–22 operating budget that OCPA adopted in June 2021, its updated budget indicated that it expected a loss for the year of $700,000. According to OCPA, this significant difference occurred because it did not have sufficient information about the amount of renewable energy its member communities desired when it developed its original budget. OCPA explained in its revised budget that certain member communities had unexpectedly adopted default rate tiers with a greater proportion of renewable energy than OCPA expected. Specifically, three of OCPA's four member communities adopted the highest renewable energy tier (100 percent renewable) for the customers in their areas, and the fourth chose the second-highest tier (69 percent renewable) for its residential and commercial customers. OCPA's projections and plans had assumed that the member communities would adopt the base tier. This tier, known as Basic Choice, is OCPA's least expensive. It contained a similar proportion of renewable energy and was the same cost as the default utility's base rate as of April 2022, as we show in Figure 4 on page 13.

The CFO confirmed that, as a result of this change, *OCPA had to purchase more renewable energy, which caused its cost of energy for the fiscal year to be higher than originally projected.* According to its revised budget, this change contributed to OCPA's projected net losses for the year. Its CFO stated that OCPA did not know about its member communities' default product selection until their board approvals were made in early February 2022. These selections occurred after the OCPA board had adopted OCPA's initial budget for fiscal year 2021–22. At the time, OCPA was just about to begin providing service to commercial customers. However, now that it is serving its full customer base, an unexpected change of this type could have a larger impact on OCPA's finances. Its CFO stated that member communities publicly discuss and adopt changes to rate tiers before they go into effect, so OCPA would

have time to revise its budget projections. However, the member communities' initial selection of rate tiers, which surprised OCPA, were also publicly discussed and adopted in the manner the CFO describes. As such, we question whether OCPA has safeguards in place to ensure that it has sufficient warning about member community actions that could significantly affect its need to procure power.

This type of situation occurred in the months after we spoke with the CFO about this issue. In January 2023, the city council of Huntington Beach voted to switch its default tier to the lowest proportion of renewable energy for new customers and municipal accounts. According to the CEO, he was unable to anticipate that Huntington Beach would vote to explore the option of choosing a lower proportion of renewable energy as its default because the city council was newly elected, and he could not anticipate what it would choose to do. The CEO stated that the logistical and financial implications of this change to OCPA would be nominal because it does not affect a substantial proportion of the current power usage OCPA supplies. However, Huntington Beach's decision to make this change illustrates how little warning OCPA currently receives when its member communities change their minds about how, or whether, they participate in the CCA. To address this same concern within its service area, the board of another CCA adopted a policy that specifies the process for its member communities to follow if they change their default rate selection. This process is intended to provide the CCA with sufficient notice and time to prepare for such changes because of the impact they have on its fiscal, operational, customer communication, and power procurement activities.

Outdated data also negatively affected OCPA's financial performance. According to a budgetary comparison report from August 2022, OCPA used outdated 2019 data from the default utility to project the demand for power, as reflected in its budget, because it believed more recent data were unreliable due to pandemic-related changes in power use. According to its CFO, despite the age of these data, OCPA had to rely on them because it did not yet have its own power usage data for its customers. The CFO stated that, because the data overestimated power demand, OCPA's actual revenue for fiscal year 2021–22 was lower. OCPA's financial statements show that, in fact, revenue was nearly $6.6 million less than projected in its midyear budget. Ultimately, OCPA's lower-than-expected revenue did not result in a net loss because its operating expenses were nearly $8.5 million less than it expected. According to its CFO, its costs were lower because OCPA ultimately sold its excess power for higher-than-anticipated prices, which helped prevent a loss for fiscal year 2021–22. Despite this fortunate occurrence, OCPA ended the year with approximately $3.4 million less in net income than it had projected in its original budget. ***If OCPA faces a similar situation in the future and is unable to obtain favorable prices for its excess power, the negative effect on the agency's financial position may be more significant.*** OCPA's CFO confirmed that there is no guarantee that OCPA will be able to sell excess power for as much as or more than it originally paid. Thus, the accuracy of OCPA's power demand projections can have a significant impact on its net income.

OCPA's budget projections for fiscal year 2022–23 face the same limitations. Specifically, OCPA has continued to use the information that it believes caused its inaccurate short-term projections in the past. In June 2022, the OCPA board adopted

a fiscal year 2022–23 budget that, according to its CFO, once again relied on the outdated 2019 data to project power usage. According to the CFO, in August 2022, the default utility provided OCPA with usage data for 2021, which OCPA has begun using to update its budget and power demand projections. However, because it did not have updated data available when it created its fiscal year 2022–23 budget, it is possible that OCPA's actual revenues will once again differ significantly from the projections in its adopted budget. Although OCPA now has more current data for planning purposes, it will be best positioned to generate accurate projections of power demand and revenue when it is able to use its own data on its customers' power use and the number who have opted out. When we discussed these issues with OCPA's CFO, she stated that starting with its fiscal year 2023–24 budget, OCPA plans to begin using its own data on its customers' energy use and participation rates.

OCPA Should Strengthen Some Aspects of Its Approach to Procuring Power

To supply its customers with power and to obtain commitments for additional generating capacity that will operate when needed for system reliability (supply capacity), OCPA enters into purchase agreements with power providers. As of September 2022, OCPA had entered into about 100 of these agreements with providers of both conventional and renewable energy, and the total value of the power and supply capacity OCPA had purchased or committed to purchase was more than $1 billion. As the Introduction describes, OCPA contracts with a firm (power consultant) to forecast the amount of power it needs and manage the procurement of power.

Common Power Purchase Agreement Terms

- Quantity of product to be delivered
- Time period
- Payment terms
- Protections for OCPA if the power provider fails to deliver
- Price

Source: Power purchase agreements.

We obtained data from OCPA on its power purchase agreements. The text box shows some of the key elements that are commonly included in these agreements. We found that, generally speaking, OCPA's power purchase agreements reference standard templates developed by industry trade organizations for purchasing electricity or supply capacity. We also reviewed the price and volume of power OCPA had contracted for. OCPA has elected to keep much of that specific information confidential, which is allowed under state law, preventing us from disclosing the details of the agreements. However, we found that the cost OCPA pays for power varies among agreements, sometimes significantly. There are multiple types of pricing structures for power purchase agreements, such as fixed prices and prices that increase over time, and the specific price of power is also influenced by factors such as whether renewable energy certificates are transferred to the buyer. However, we also found that power prices varied among agreements with otherwise similar characteristics.

Prices in energy markets are highly volatile, and OCPA and its consultant asserted that for this reason, prices for otherwise equivalent products can change significantly over short periods of time. Although this volatility could well explain the variation

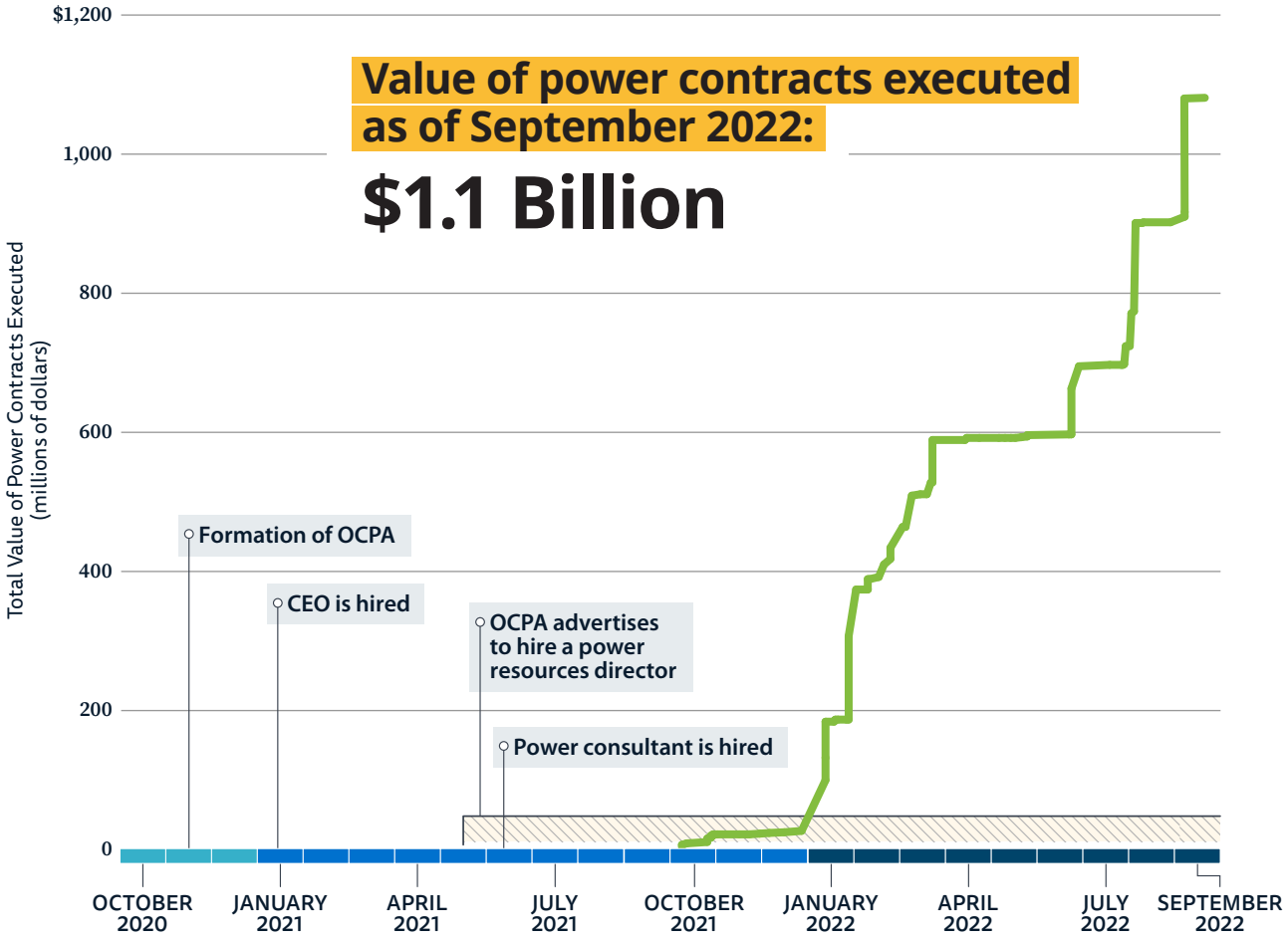
we saw, we are concerned that OCPA staff may not have sufficient technical knowledge about the power purchase agreements and their terms to ensure that those terms are reasonable. For example, OCPA's CFO stated that we should speak to its power consultant to obtain answers to questions about specific details in agreements and why the prices in some agreements differed from one another. Similarly, the CFO indicated to us that OCPA's consultant, and not OCPA staff, is responsible for tracking and managing detailed data on the amount of power OCPA has secured compared to the anticipated need of its customers. Finally, when we requested an estimate of the reduction in fiscal year 2022–23 revenue that was attributable to lower-than-expected participation rates, the CFO stated that OCPA does not have that estimate.

Although it may be reasonable for OCPA to rely on the technical advice of industry experts, particularly as a new organization that lacks staff with certain expertise, it is also vital that OCPA develop the technical capacity and institutional knowledge to safeguard the use of its customers' funds and their interests through effective oversight of outside consultants. However, despite repeatedly acknowledging this staffing need, OCPA has been slow to secure its own staff with this type of expertise. Specifically, as Figure 8 shows, OCPA has been attempting to hire a power resources director since May 2021 but has not yet filled that position, despite executing more than $1 billion in power purchase agreements.

In a June 2022 OCPA board meeting, the CEO addressed the board's questions about OCPA's attempt to hire someone for this position by describing OCPA's ongoing recruitment efforts and its struggles to find an applicant with the necessary experience. He also described the OCPA power consultant's experience and how he was pleased with its work. However, the CEO acknowledged that the power consultant has obligations to other customers.

In September 2022, in response to criticism from the Orange County Grand Jury that OCPA had failed to hire experienced senior staff, resulting in a lack of contractor oversight and other operational shortcomings, OCPA stated that the Grand Jury's recommendation to hire qualified staff was implemented. To support this assertion, it described its efforts to hire a power resources director and also emphasized the relevant experience of its CFO. As we discuss above, the CFO referred us to the power consultant for answers to questions about specific details in OCPA's power agreements and why prices differed. Because the CFO does not oversee some aspects of its power consultant's operations, we question why OCPA believes that it has implemented the Grand Jury's recommendation. When we asked the CEO if he believes the recommendation has been fully implemented or if it was partially implemented and additional steps need to be taken, he indicated that OCPA considered the recommendation to be implemented because it had begun the process of hiring a power director. Nevertheless, because OCPA has not yet hired this staff member, it still does not have the technical capacity to effectively oversee certain aspects of its power consultant's work. The CEO described a number of challenges associated with hiring staff, including a competitive labor market, and added that, despite his efforts to fill this position, thus far a qualified candidate has not accepted the position. However, he also noted that OCPA went to the board for approval to update all pay ranges at the December 2022 board meeting.

Figure 8
OCPA Executed More Than $1 Billion in Power Contracts While the Internal Position Responsible for Overseeing Energy Purchases Was Vacant



Source: OCPA power purchase agreements, implementation plan, and staff interviews.

OCPA also did not use other resources at its disposal that could help demonstrate transparency and show that it is doing its best to mitigate risk. Specifically, OCPA has a risk management policy that describes a risk oversight committee. According to that policy, it provides management with the authority to establish processes for monitoring, measuring, reporting, and controlling the market and credit risks to which OCPA is exposed in its normal course of business. However, as the text box shows, OCPA could not demonstrate that it had complied with multiple provisions of that policy. The CEO stated that the risk oversight committee consists of himself, certain OCPA staff, OCPA's legal counsel, and representatives from OCPA's power consultant, and that the committee meets approximately weekly. However, the current structure of this committee does not appear to accomplish its intended purpose. Because it includes the individuals who are responsible for performing the activities it is intended to oversee, it is not clear how its activities constitute oversight.

Unmet Responsibilities of the Risk Oversight Committee

OCPA could not demonstrate that the committee has:

- Produced quarterly reports to the board regarding the committee's meetings, deliberations, and any other areas of concern.
- Adopted risk management guidelines that defined internal controls, strategies, and processes for managing market risks.
- Enforced compliance with the risk management policy and reported violations to the board.

Source: OCPA's risk management policy and interviews with OCPA staff.

This oversight committee could provide a method of ensuring that a subset of the board is informed of OCPA's operations and could provide additional oversight. OCPA does not share the confidential terms of its purchase agreements with its board at open meetings or in closed sessions, and the CEO described an ad-hoc process for providing such information to individual board members when they request it. He also confirmed that board members have not participated in the meetings he described as fulfilling the function of the risk oversight committee. Formalizing the involvement of a subset of the board on this committee could better position board members to exercise oversight of OCPA's critical and more high-risk activities and increase the committee's independence.

Please refer to the section beginning on page 5 to find the recommendations that we have made as a result of these audit findings.

We conducted this performance audit in accordance with generally accepted government auditing standards and under the authority vested in the California State Auditor by Government Code section 8543 et seq. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

GRANT PARKS
California State Auditor

February 28, 2023

Appendix

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor (State Auditor) in September 2022 to conduct an emergency audit of OCPA to evaluate its finances, projections, and other business operations. The audit was approved under Audit Committee Rule 17, which pertains to audit requests of an urgent nature. Recognizing that Rule 17's cost limitations prevented us from addressing all objectives of the audit, we focused our audit on a subset of those objectives. The table below lists the objectives and the methods we used to address them.

Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Determine why there was a failure to fully disclose revenues and expenditures, what those expenditures are, and who received those funds.	• Assessed the nature and timeliness of OCPA's financial reporting by reviewing OCPA's audited financial statements and supporting documents. • Identified major OCPA expenditures since its inception, including energy, consulting, and administrative costs. • Determined whether OCPA appropriately followed its contracting policies by reviewing a selection of contracts for services. • Determined whether OCPA staff notified the board or received board approval for contract services, when applicable. • Interviewed OCPA staff and its contracted legal counsel and documented OCPA's process for tracking its responses to public records requests.
2	Review OCPA's power purchase agreements and practices.	• Reviewed OCPA's process for executing power purchase agreements. • Assessed key agreement terms for a selection of purchase agreements. • Interviewed OCPA staff and its consultants to obtain an understanding of the terms of the power purchase agreements.
3	Determine what OCPA's projections were for revenue and assess whether those projections were achieved.	• Compared OCPA's projected and actual revenue. • Reviewed key variables used in OCPA's methodology for creating its revenue projections for current and future fiscal years.
4	Determine the loss of revenue from customers who opted out or opted down.	• Reviewed OCPA data to determine the number of customers who have opted out of service to date and estimated the likely impact on revenue. • Compared OCPA's opt-out rate to that of other CCAs. • Investigated potential causes for customers opting out of OCPA service or switching to lower tiers of service.
5	Determine if there were violations of the Ralph M. Brown Act.	• Reviewed six regular and special meetings of OCPA's board and determined that staff appropriately placed discussion items on its meeting agendas, that the board allowed for public comment at each meeting, and that OCPA complied with other related requirements. • Requested OCPA's website data to determine, for a selection of board meetings, whether OCPA provided the required 72-hour notice when posting materials. • For a selection of closed-session board meetings, attempted to determine whether OCPA met Brown Act requirements for reporting on actions taken.

continued on next page . . .

	AUDIT OBJECTIVE	METHOD
6	Determine what the hiring practices and standards are for officers.	Due to the cost limitations imposed by Audit Committee Rule 17, we were not able to address this objective.
7	Determine how notice was provided to customers that explained how to opt out of OCPA services.	• Reviewed OCPA's process for notifying customers of their right to opt out of OCPA service and attempted to gain reasonable assurance that OCPA conducted the process in compliance with state law and that it sent timely notifications to customers. • The documentation we reviewed indicates that OCPA and its contractor took allowable and reasonable steps to identify the prospective customers it is required to notify and to provide that notification by mail within the required time frame.
8	Assess the long-term viability of OCPA.	Due to the cost limitations imposed by Audit Committee Rule 17, we were not able to address this objective.

Source: Audit workpapers.

Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of the computer-processed information that we use to materially support our findings, conclusions, or recommendations. In performing this audit, we relied on the following data and systems.

To identify OCPA's major categories of expenditures, we relied on electronic data obtained from its accounting software. We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues. To verify the completeness of the data, we compared totals calculated from the data to audited financial statements from the same period and found no material errors. We did not perform accuracy testing of these data because of the budget limitations imposed by Audit Committee Rule 17. Consequently, we found the data to be of undetermined reliability for the purposes of supporting our conclusions relating to OCPA's revenues and expenditures. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

We also relied on data related to the number and type of OCPA customers that have opted out of service. We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues. Because our conclusions related to this data are supported by other evidence collected in the course of our work, and because of the budget limitations imposed by Audit Committee Rule 17, we did not perform additional work. Therefore, we determined that the data are of undetermined reliability for our purposes. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

February 10, 2023

Grant Parks, State Auditor*
California State Auditor
621 Capitol Mall, Ste 1200,
Sacramento, CA 95814

Dear Mr. Parks,

We appreciate the opportunity to respond to the California State Auditor's draft audit report regarding the Orange County Power Authority (OCPA).

We respect the role of the California State Auditor in ensuring that government and public agencies provide efficient and high-quality services in a transparent manner. We also appreciate the professionalism displayed by the auditor's team over the past few months as we collaborated on the state audit.

While we don't agree with all conclusions or characterization of issues in the report, we do take it seriously and see it as a resource for OCPA and our Board of Directors as we strive for continued improvement. As a new community choice energy program (CCE) with a critically important mission of climate action, a focus on continuous improvement will allow OCPA to succeed in reaching its goals of providing our customers with an energy choice for the first time ever, moving our region closer to 100% clean energy at a competitive rate – OCPA's Basic Choice gives customers more clean energy at a 2% cost savings compared to Southern California Edison (SCE) on the equivalent generation rate – and investing in innovative programs that benefit residents, businesses, and the economy in our communities. (1)

Participating in OCPA is the main way for our member agencies to decarbonize the electric grid and reduce their local greenhouse gas emissions from the generation of electricity. OCPA is one of the largest and greenest CCEs in the state with 78% of its customers at the 100% clean energy level and 18% at the 69% clean energy level, which is the equivalent of taking 200,000 traditionally powered vehicles off the road per year.

We are committed to working with our Board of Directors on a Continuous Improvement Plan that will include consideration of the recommendations contained in the state audit. (2)

Thank you, again, for the investment of time in OCPA's future.

Sincerely,

Brian Probolsky
CEO
Orange County Power Authority

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* California State Auditor's comments appear on page 39.

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM ORANGE COUNTY POWER AUTHORITY

To provide clarity and perspective, we are commenting on the response to our audit from OCPA. The numbers below correspond to the numbers we have placed in the margin of the response.

According to OCPA's website, the Basic Choice rate it describes in its response went into effect in mid-January 2023. Although the Basic Choice rate shown in Figure 4 on page 13 of our report differs, it was the existing rate during the period we reviewed. ①

We look forward to receiving updates from OCPA at 60 days, six months, and one year from the issuance of this report on its progress toward implementing our recommendations. ②